

EXHIBIT D

Rahul Gupte

August 11, 2009

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

THOMAS ARCHER and RUKHSANA RAFIQUE,

also known as "Rukhsana Rukhsana,"

Defendants.

DEPOSITION OF RAHUL GUPTE, the
witness herein, taken at the offices of the
United States Attorney, Eastern District of
New York, 271 Cadman Plaza East, Brooklyn, New
York, on August 11, 2009, at 10:00 a.m.,
before Robert Bloom, a Shorthand Reporter and
notary public, within and for the State of New
York.

Rahul Gupte

August 11, 2009

Page 6	Page 8
<p>1 2 regard to this witness' H4 file nor any 3 documents with regard to this witness' C 4 file, C Visa. 5 Thereafter, in conversations with 6 AUSA Goldsmith, it was brought to my 7 attention that there were some notes from 8 ICE agents that were removed on the 9 grounds that the ICE agents say they are 10 attorney work product. 11 It is the defense's position that 12 these items are valid 3500 material, that 13 they should be produced because they could 14 contain exculpatory information or they 15 could contain statements made by this 16 individual, and it's something that should 17 be produced to the defense. 18 As such, the defendants will be 19 reserving their right to have a deposition 20 of this witness at a later date. 21 MS. WHALEN: I join in that 22 application. Especially with respect to 23 any other immigration applications that 24 are outstanding in this matter. 25 Credibility is the key here, the</p>	<p>1 2 Redactions were made from those files to 3 remove attorney work product by ICE 4 attorneys, not any ICE agents. And 5 certain other internal ICE documents in 6 the nature of interoffice memo cover 7 sheets, and printouts from ICE databases. 8 It is correct that there's no H -- no 9 references to any H4 application or visa 10 or any C Visa in the witness' A file or T 11 file. 12 Last night, Ms. Alomar suggested that 13 we check the witness' wife's A file. I 14 have made a request for that. I'm told 15 that the witness' wife does not have an A 16 file, that she has two receipt files, 17 which is not a term I had heard before. 18 They are in Vermont. The request has 19 been made to get them. 20 If there is anything in those files 21 that is 3500 material for this witness or 22 Giglio or Brady, we will turn it over. 23 The items that were withheld from the 24 witness' A file and T file I believe do 25 not contain any 3500 material, certainly</p>
Page 7	Page 9
<p>1 2 defense has asserted that credibility is 3 the key from the beginning of this case. 4 And the real issue is who is supplying the 5 information on these documents that's 6 supposed to be false. And if this 7 individual has provided other information 8 on other documents that we have reason to 9 believe is false, by not giving us those 10 documents, you've effectively precluded us 11 on fully cross-examining him with respect 12 to credibility. 13 With respect to the issues of work 14 product, again, if there are any 15 statements by the witness that have been 16 redacted from those documents, then 17 clearly I think they are 3500 material and 18 should be provided to us. And, again, I 19 join in the reservation of the right to 20 recall the witness or object to the 21 testimony being presented at trial given 22 this potential limitation of examination. 23 MR. GOLDSMITH: We turned over the 24 3500 material, the witness' A file, the 25 witness' T file, both of those files.</p>	<p>1 2 do not contain any statements by the 3 witness, and do not contain any Brady or 4 Giglio. 5 I should also mention finally that we 6 also turned over the witness' I140 7 application and a letter that was attached 8 to that. That application was not 9 contained in the A file or the T file, but 10 it was apparent that it must have existed 11 somewhere, so we managed to find it and 12 turned it. 13 MS. ALOMAR: I'm sorry, I just have a 14 concern after the statements you have made 15 because it leaves me to believe the 16 possibility exists that this witness may 17 have two different A numbers or possibly 18 even three A numbers, because from my 19 understanding of the immigration process 20 is that if this witness came on an H4 21 visa, then his wife must have received -- 22 if his statements are true that he came on 23 an H4 visa based on his wife's being 24 granted an H1 visa -- then there has to be 25 a file for his wife, not just a receipt</p>

Rahul Gupte

August 11, 2009

Page 10	Page 12
<p>1 2 file, which would lead me to believe that 3 his wife has an application pending and 4 the application has yet to be approved. 5 So based on these statements, it 6 leads me to believe that there are 7 documents missing for these witnesses. 8 I would ask that maybe the best way 9 to determine if there are any other files 10 is to maybe do a match through 11 fingerprints. Actually, that wouldn't 12 even apply because like the labor cert, if 13 he didn't get his fingerprints, yet if it 14 was only the paperwork being done, there 15 is no way of cross referencing the files. 16 MR. GOLDSMITH: I'm told that the 17 witness has only one A number, I 18 understand sometimes people have more than 19 one. 20 I should clarify perhaps the T file 21 that I referenced, the T as I understand 22 it is for "temporary." Under some 23 circumstances apparently ICE, if they need 24 to add something to someone's file but 25 can't get a hold of the A file in a timely</p>	<p>1 2 voluntary departure is being withheld, 3 he's not going to be granted -- let me 4 rephrase -- the letters that we have say 5 that his getting voluntary departure is 6 consistent with his cooperation with the 7 government. 8 So to whatever extent you can make 9 sure that he remains in the country until 10 we have had an opportunity to review those 11 files, I would appreciate it. 12 MR. GOLDSMITH: Okay. Just to 13 clarify, his removal proceedings are 14 effectively on hold during his cooperation 15 with the government. It's up to the 16 immigration judge whether he gets 17 voluntary departure or is removed 18 otherwise. 19 But, yes, I will ask him to remain 20 here until I can get those files and 21 review them and if something needs to be 22 turned over and we need to bring him back 23 until we resolve that issue. 24 MS. WHALEN: Great. 25 MS. ALOMAR: I would join in that</p>
Page 11	Page 13
<p>1 2 fashion they create a T file and they're 3 later combined. In this instance, they 4 hadn't been combined yet. We figured out 5 the T file was still out there, so we got 6 it. 7 Like I said, when I get the wife's 8 file, whatever exists for the wife, I'm 9 told they're receipt files as opposed to A 10 files, I don't know if that is a 11 particularly meaningful distinction, but 12 when we get those files, we'll look at 13 them and if there is anything that should 14 be turned over with respect to Mr. Gupte, 15 we will do that. 16 MS. WHALEN: Do you know, did they 17 give you an idea about when they would 18 have the files down here? 19 MR. GOLDSMITH: They did not. 20 MS. WHALEN: I would just then 21 request that you request that Mr. Gupte 22 remain until we had an opportunity to 23 receive and review those files in case we 24 need to request him, and my 25 understanding is that the benefit of</p>	<p>1 2 application for the defendant, Thomas 3 Archer. But I want to just clarify 4 something. 5 When you say that this witness' 6 immigration removal proceeding is being 7 put on hold, does that mean that the 8 September date that he has, the September 9 11th court appearance is being adjourned? 10 MR. GOLDSMITH: As far as I know, 11 September 11th court appearance is still 12 set to happen. 13 At that point, it could be adjourned 14 further, but my understanding is he's due 15 in immigration court on September 11th. 16 MS. WHALEN: I guess the issue would 17 be, if the government -- we are just 18 asking that if the government is providing 19 any letters in support of whatever 20 immigration benefit he's seeking, then we 21 would just ask that the government not 22 provide that letter until we have had an 23 opportunity to resolve this issue about 24 the deposition. 25 MR. GOLDSMITH: The government is not</p>